

S.B. CIVIL SECOND APPEAL NO.257/2005

Ram Lal & anr. vs. Kanwari Lal & ors.

Date : 9.9.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Rakesh Arora, for the appellants.

Mr. R.Charan, for the respondents.

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Heard learned counsel for the parties.

The appellants are aggrieved against the concurrent findings of fact recorded by the two courts below in the judgments and decrees dated 6.11.2001 and 7.5.2005 by which the suit of the plaintiffs/appellants for grant of prohibitory injunction was dismissed by the trial court and appeal against the trial court's judgment was dismissed by the first appellate court.

Learned counsel for the appellants submits that a patta was issued in favour of the appellants by Municipal Board, Jaitaran and that was produced and exhibited as Exhibit-23A Two courts below, without considering that document, decided the suit of the plaintiffs and reached to the conclusion that the plaintiffs have no right, title or interest in the property in dispute. According to learned counsel for the appellants, the defendants' contention that their doors and windows are opening in the land in question were wrongly accepted by the courts below.

I have considered the submissions of learned counsel for the appellants and perused the facts of the case.

The facts reveal that the suit for permanent injunction was filed on 25.6.1996 with specific plea that the entire land over which the plaintiffs' house has been constructed was originally a temporary construction but subsequently, a pucca construction has been raised by the appellants. According to the plaintiffs/appellants, the respondents/defendants encroached upon the Government land and constructed their house. When the plaintiffs started new construction for his house after demolishing old construction, the defendants raised objections, therefore, the plaintiffs filed the suit for injunction with allegation that in the night of 23rd and 24th of June, 1996, the defendants opened two windows in the open land.

The defendants contested the suit on all facts and produced the patta of their property and also produced copy of patta of the plaintiffs' property.

The Municipal Board and Executive Officer of Municipal Board are the parties in the suit. They filed a written statement stating therein that the plaintiffs are raising construction of the house over their own patta sud land. However, the Municipal Board admitted that the land in possession of the plaintiffs is more than the land which is mentioned in the patta. It was also admitted that there is an iron gate fixed which belongs to the plaintiffs and the proceedings of allotment of land on the application of the

plaintiffs is pending.

The trial court as well as appellate court considered the documentary as well as oral evidence and relied upon the patta of the plaintiffs and defendants to find out the nature of the land in question. Two courts below concurrently found that the land in question is a public lane as mentioned in the patta. The plaintiffs even failed to produce the patta and copy of patta of the plaintiffs' house was produced by the defendants which also supported the case of the defendants, therefore, the finding recorded by the two courts below is based on evidence not only cogent but reliable evidence.

Obtaining patta for the land in dispute during the pendency of the suit from co-defendant itself also proves that at the time of filing of the suit, the plaintiffs had no right, title or interest in the land in dispute. In view of the above, if one of the co-defendant Municipal Board executed any deed in relation to the disputed property in favour of the plaintiffs, it is of no consequence and was not worth consideration because of the admitted facts that the property was dealt with by the Municipal Board during the pendency of the suit when the other defendant's case was that it is a public lane and no patta can be given of this property. The finding of two courts below is that the land in question is a public lane, therefore, any patta issued in favour of the plaintiffs is of no consequence.

No question of law is involved in this appeal what to

say of any substantial question of law.

In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya